

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**

2 IN THE STATE OF ARIZONA

3
4 In the Matter of

5 **PHILLIP EU DAILEY GEAR, JR., M.D.,**

6 Holder of License No. **15896**
7 For the Practice of Medicine
8 In the State of Arizona.

Case No. MD-00-0034

INVESTIGATION NO. 13459

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDERS**

(Letter of Reprimand)

9
10 **INTRODUCTION**

11 This matter was considered by the Arizona Board of Medical Examiners
12 ("Board") at its public meeting on December 13, 2000. Philip Gear, M.D. appeared
13 before the Board, with legal counsel, Jay Fradkin, Esq., for the purpose of the Board
14 conducting a formal interview, pursuant to the authority vested in the Board by A.R.S.
15 § 32-1451(G). After due consideration of the facts and law applicable to this matter,
16 the Board voted to issue the following findings of fact, conclusions of law and order.

17 **FINDINGS OF FACT**

- 18 1. The Board is the duly constituted authority for the regulation and control
19 of the practice of allopathic medicine in the State of Arizona.
- 20 2. Dr. Gear is the holder of License No. 15896 for the practice of medicine
21 in the State of Arizona.
- 22 3. Board Investigation No. 13459 was initiated after the Board was notified,
23 regarding and eight-day-old female infant.
- 24 4. Investigation revealed that on 10/1/96, the patient was taken to Herbert
25 Brown, M.D., regarding concerns of jaundice and difficulty with bowel
movements. Dr. Brown contacted the office of Phillip Gear, M.D. and

1 arranged for a same-day pediatric consultation. Dr. Brown saw the
2 patient but did not perform a physical examination and ordered blood
3 tests to determine the cause of the jaundice.

- 4 5. The patient's mother indicated that the infant was having problems
5 passing stools and Dr. Gear reassured her that this should not be a
6 problem. The blood test indicated an elevated bilirubin that was slowly
7 resolving.
- 8 6. The patient's mother called Dr. Gear's office on multiple occasions
9 regarding stool movement problems. On 10/11/96, the patient was seen
10 for a two-week check up by Dr. Raza. The patient's mother indicated
11 that the patient was having stool movement problems. Dr. Raza
12 performed a physical examination, noted no abnormalities and counseled
13 the patient's mother on constipation issues. Dr. Raza did not perform a
14 rectal exam.
- 15 7. On 10/16/96, the patient's mother called Dr. Gear's office again
16 regarding the patient's problems and spitting up milk, and the mother
17 was advised to continue using formula. Later that same day, the patient
18 was taken by paramedics to St. Joseph's Hospital and Medical Center in
19 Phoenix, Arizona. The patient was having increased abdominal
20 distention, failing to feed, not breathing well and had poor color. The
21 patient was diagnosed with imperforate anus upon examination of the
22 perineum area, along with toxic megacolon, rectal/vaginal fistula and
23 sepsis.
- 24 8. The patient was admitted for further inpatient care but expired on
25 10/23/96, due to complications of multi organ failure and septic shock.

- 1 9. Dr. Gear failed to perform a rectal exam on a child with a complaint of
2 difficult bowel movements, which falls below the standard of care.

3 **CONCLUSIONS OF LAW**

- 4 1. The Board possesses jurisdiction over the subject matter hereof and
5 over Dr. Gear pursuant to A.R.S. § 32-1401 *et seq.*
6 2. The conduct and circumstances described above in paragraphs 3
7 through 8 constitute unprofessional conduct pursuant to A.R.S. § 32-
8 1401(25)(II) "Conduct that the Board determines is gross negligence,
9 repeated negligence or negligence resulting in harm to or death of a
10 patient."

11 **ORDER**

12 Based on the foregoing Findings of Fact and Conclusions of Law,
13 IT IS HEREBY ORDERED THAT:

- 14 1. A letter of reprimand be issued to Phillip Eu Dailey Gear, Jr., M.D. for the
15 aforementioned unprofessional conduct.

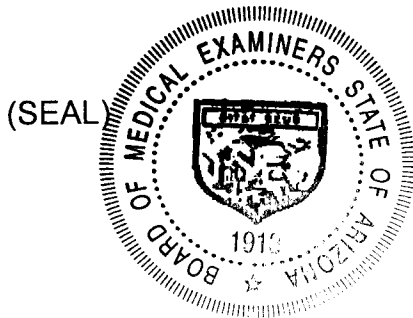
16 **RIGHT TO PETITION FOR REVIEW**

17 Dr. Gear is hereby notified that he has the right to petition for a rehearing. Pursuant
18 to A.R.S. § 41-1092.09, as amended, the petition for rehearing must be filed with the
19 Board's Executive Director within thirty (30) days after service of this Order and pursuant
20 to A.A.C. R4-16-102, it must set forth legally sufficient reasons for granting a rehearing.
21 Service of this Order is effective five (5) days after the date of mailing. If a motion for
22 rehearing is not filed, the Board's Order becomes effective thirty-five (35) days after it is
23 mailed to Dr. Gear.

24 Dr. Gear is further notified that the filing of a petition for rehearing is required to
25 preserve any rights of appeal to the Superior Court that he may wish to pursue.

1 DATED this 23 day of February, 2001.

3 BOARD OF MEDICAL EXAMINERS
4 OF THE STATE OF ARIZONA



6 By Tom Adams
7 for CLAUDIA FOUTZ
8 Executive Director

9 ORIGINAL of the foregoing filed
10 this 23rd day of February, 2001, with:

11 The Arizona Board of Medical Examiners
12 9545 East Doubletree Ranch Road
13 Scottsdale, Arizona 85258

14 EXECUTED COPY of the foregoing mailed by
15 Certified Mail this 23rd day of February, 2001, to:

16 Phillip Eu Dailey Gear, Jr., M.D.
17 5501 North 19th Av. - Ste. 400
18 Phoenix, AZ 85015

19 EXECUTED COPY of the foregoing mailed
20 this 23rd day of February, 2001, to:

21 Jay Fradkin, Esq.
22 Jennings Strouss & Salmon PLC
23 Two North Central - 16th Floor
24 Phoenix, AZ 85003-2393
25 Counsel for Dr. Gear

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COPY of the foregoing hand-delivered this
13th day of February, 2001, to:

Richard F. Albrecht, Esq., Assistant Attorney General
c/o Arizona Board of Medical Examiners
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258
Counsel for the Board

Donald A. Jumper